**IN** THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.697 OF 1994

Shri Padmakar Anandrao Tamhane, adult, Indian Inhabitant, residing at 157A, Saraswati Niwas, Sir Bhalchandra Road, Hindu Colony, Dadar, Bombay-400 014. .... Petitioner

\- Versus -

1. Shri Mukund Ramchandra Gupte, residing at 3rd Floor, Sai Swami, Sir Bhalchandra Road, Hindu Colony, Dadar, Bombay-400 014.

2. Mrs. Kumudini Mukund Gupte

3. Smt. Sushilabai Anandrao Tamhane, since deceased, by heirs:

3A. Mrs. Kumudini Mukund Gupte, r/o Sai Swami Sir Bhalchandra Road, Hindu Colony, Dadar, Bombay-400 014.

3B. Shri Padmakar Anandrao Tamhane, Adult, Indian Inhabitant, residing at 157-A, Saraswati Niwas, Sir Bhalchandra Road, Hindu Colony, Dadar, Bombay-14. .... Respondents

Shri D.S. Sawant for the Petitioner.

Shri N.D. Jaywant for the Respondent No.1.

**CORAM:** R.M.S. KHANDEPARKAR, J.

**DATED:** DECEMBER 05, 2005

**ORAL JUDGMENT:**

1. Heard. The petitioner challenges the order dated 7-1-1994 passed by the Court of Small Causes at Mumbai

in Appeal No.153 of 1993 whereby the appeal was dismissed against the order dated 21-11-992 of the trial Judge wherein the trial Judge had dismissed the petitioner's Interim Notice No.4159 of 1991 in R.A.E. Suit No.2215 of 1991 and thereby had rejected the relief of temporary injunction. During the pendency of the petition, however, the petitioner was armed with the interim relief restraining the respondents from parting with possession or creating third party interest in the suit premises, as also from transferring the rent receipts in relation to the suit premises till the disposal of the suit.

2. The main grievance of the petitioner is that though life interest in relation to the suit property was created in favour of the mother of the petitioner, namely, Smt. Sushilabai, the petitioner had already acquired right in the suit property consequent to the death of his father. Being so, merely because the enjoyment of the property was reserved for the mother of the petitioner, it was not a hindrance to the petitioner in filing a suit to restrain the respondents from causing harm to the property or creating third party interest in the property. As regards the injunctive relief, it is the case of the petitioner that he had clearly made out a prima facie case for grant of interim relief as the intention on the part of the respondents to create third party interest in the property was

evident from the visits of strangers to the suit property and confirmation of the said intention by those strangers to the petitioner which fact has been clearly established by the petitioner by filing his affidavit in that regard. On the other hand, it is the case of the respondents that there was absolutely no material placed on record to warrant any injunctive relief and therefore no fault can be found with the exercise of discretion by the Court below in rejecting the injunctive relief to the petitioner. As regards the right to file the suit, according to the respondents, no right had matured in favour of the petitioner on the date of filing of the suit to do any act which can give the benefit of enjoyment of the property directly or indirectly to the petitioner, as the life interest in the property was reserved exclusively in favour of the mother and the mother was alive at the relevant time.

3. It is not necessary to go into the rival contentions in the matter. Suffice to observe that the records clearly disclose a solemn statement on behalf of the respondents that they have no intention to create third party interest in the suit premises or to part with the possession of the premises. There is a clear observation in that regard in the impugned order dated 7-1-1994. Considering the same, it is not necessary to deal with the issue regarding prima facie case or balance of convenience and while accepting the said

statement on behalf of the respondents, suffice to direct the Court below to dispose of the suit as expeditiously as possible.

4. As regards the maintainability of the suit, it will be primarily for the trial Court to deal with the said issue in accordance with the provisions of law and it is too premature to pronounce judgment on the said issue by this Court at this stage.

5. In the result, therefore, while accepting the said statement on behalf of the respondents that they have no intention to create third party interest and would not part with the possession of the suit premises till the disposal of the suit, the petition is disposed of with no order as to costs while discharging the rule.

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